

APPEAL NO. 020097
FILED FEBRUARY 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 3, 2001. The hearing officer determined that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). The claimant appealed, arguing that the hearing officer erred in determining entitlement to LIBs. The respondent (carrier) filed a response urging affirmance.

DECISION

Affirmed.

At issue is whether the claimant is entitled to LIBs. The hearing officer found the claimant was not entitled to LIBs based on Section 408.161(a)(2) and (5). Section 408.161(a)(2) provides that LIBs are paid until the death of the employee for the loss of both feet at or above the ankle. Section 408.161(a)(5) provides that LIBs will be paid for an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg. Section 408.161(b) provides that the loss of use of a body part is the loss of that body part for purposes of subsection (a). In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, citing Travelers Ins. Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted that the test for total loss of use is whether the member possesses any substantial utility as a member of the body or whether the condition of the injured member is such that it keeps the claimant from getting and keeping employment requiring the use of the member. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that a claimant need only satisfy one prong of the test in order to establish entitlement to LIBs.

In the present case, the medical reports in evidence indicate that the claimant was diagnosed with reflex sympathetic dystrophy involving the right upper and lower extremities and that she was wheelchair bound. However, the claimant testified that she walked for short distances and that she used a cane, walker, crutches, and wheelchair to get around. The hearing officer was not persuaded by the medical reports in evidence that the claimant has loss of use of both feet at or above the ankle. Similarly, there was no evidence of any paralysis to the claimant's lower extremities. The hearing officer's determinations that the claimant failed to establish entitlement to LIBs based on a lack of any specific condition in Section 408.161 is supported by the evidence.

It is for the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)) to resolve those conflicts (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)) and this applies equally to medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We hold that the

hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
SUITE 750
COMMODORE I
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge